I would therefore dismiss the application with costs with liberty to file a regular action within one month of this order.

Application dismissed.

Solicitors: *Kirpal Singh Brar; Ranjit, Thomas & Kula; Devaser & Co.*

FREDDY TAN v. PUBLIC PROSECUTOR

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Chua J.) June 13, 1969]

[Singapore — Federal Court Criminal Appeal No. Y9 of 1968]

Criminal Law and Procedure — Trial — Sentence — Appellant found guilty of culpable homicide not amounting to murder — Jury not asked whether verdict based on diminished responsibility or some other ground raised by defence — Diminished responsibility raised in defence — Penal Code, s. 304.

Penal Code, s. 304 — Culpable homicide not amounting to murder — Defence of diminished responsibility and other defences — Rule of practice.

The appellant was convicted of culpable homicide not amounting to murder and was sentenced to life imprisonment. The evidence at the trial and the summing up of the judge clearly indicated that the main and ndeed the only defence helied on in the closing stages of the trial was diminished responsibility. The jury by a majority found the appellant guilty of culpable homicide not amounting to murder but they were not asked whether their verdict (in reducing the crime of murder to culpable homicide not amounting to murder) was on the ground of diminished responsibility or some other ground raised by the defence. On appeal it was submitted that the judge should have applied the second limb of section 304 of the Penal Code which imposed a maximum punishment of 10 years imprisonment or fine or both.

Held, dismissing the appeal: on the evidence in this case there was no doubt that the jury reduced the crime of murder to one of culpable homicide not amounting to murder on the ground of diminished responsibility and the appeal against sentence must therefore be dismissed.

Practice Note: in cases where on a charge of murder a defence of diminished responsibility and some other defence such as grave and sudden provocation are raised, if the jury return a verdict of culpable homicide not amounting to murder the judge, to enable him to assess the sentence he ought to impose, may and should generally then ask whether their verdict is based on diminished responsibility or on other ground or both.

FEDERAL COURT.

S.K. Lee for the appellant.

Francis T. Seow, Solicitor-General (*K.S. Rajah,* Deputy Public Prosecutor, with him) for the respondent.

Chua J.: This is an appeal against sentence by the appellant who was convicted by the High Court of culpable homicide not amounting to murder and sentenced to life imprisonment. The court at the close of the argument dismissed the appeal. We now proceed to give our reasons for dismissing the appeal.

On the 1st October, 1967, the dead body of Gene Koh Chai Lee was found lying at the edge of the nature reserve at the 7½ m.s. Old Thomson Road. The body was decomposed. The only injuries found were injuries to the head. There were fractures on the left side of the skull and at the back of the vault of the skull and the lower part of the skull cap was missing. Police investigations led to the arrest of the appellant and he was charged with the murder of Gene Koh Chai Lee. The case of the prosecution was that it was the appellant who inflicted the injuries on the head of the deceased and killed him on the 28th September, 1967, and later threw the dead body where it was found on the 1st October, 1967.

At the trial the appellant's counsel in his opening address to the jury said that the defence would rely on grave and sudden provocation, right of private defence, sudden fight and diminished responsibility and would submit that the appellant was guilty not of murder but of culpable homicide not amounting to murder. The appellant made a statement from the dock alleging that he was insulted and provoked by the deceased and he slapped the deceased who took up a chair to hit him and he took a stick to protect himself. A fight ensued. The deceased hit him with a chair and he hit the deceased with the stick on the head. Later he found that the deceased was dead.

The defence called medical evidence relating to the appellant's mental health. The evidence was to the effect that the appellant's mind was severely abnormal and that his mental responsibility could be said to be seriously impaired. Medical evidence was given by the prosecution in rebuttal.

The evidence at the trial and the summing-up of the judge clearly indicated that the main and indeed the only defence relied on at the closing stages of the trial was that of diminished responsibility.

By a majority verdict of 5 to 2 the jury found the appellant guilty of culpable homicide not amounting to murder.

It was argued that the trial judge in this case had imposed the sentence of imprisonment for life on the basis that the jury had found the appellant guilty of the lesser offence on the ground of diminished responsibility when in fact they had not been asked if they reduced the crime of murder to culpable homicide not amounting to murder on the ground of diminished responsibility or some other ground

raised by the defence. It was submitted that in these circumstances the judge should have applied the second limb of section 304 of the Penal Code which provided for a maximum punishment of 10 years imprisonment or with fine or with both "if the act (by which death is caused) is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death." It was submitted that the judge should not fix the sentence on facts which did not reflect the verdict of the jury.

As stated earlier, the main defence in this case was diminished responsibility. The other defences of the appellant were defences which on the evidence a reasonable jury would reject. On the evidence in this case we were left in no doubt that the jury reduced the crime of murder to one of culpable homicide not amounting to murder on the ground of diminished responsibility and we accordingly dismissed the appeal against sentence.

This appeal gives us an opportunity for suggesting a rule of practice in cases where on a charge of murder a defence of diminished responsibility and some other defence such as grave and sudden provocation are raised. If the jury return a verdict of culpable homicide not amounting to murder the judge, to enable him to assess the sentence he ought to impose, may and should generally then ask whether their verdict is based on diminished responsibility or on the other ground or on both.

Appeal dismissed.

Solicitors: *S.K. Lee & Co.*

MOHAMED HASHIM v. LIM AH TOO & ANOR.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Chua J.) June 13, 1969]

[Singapore—Federal Court Civil Appeal No. Y54 of 1968]

Negligence — Contributory negligence — Duty of Care.

This was an appeal against the decision of the High Court which gave judgment against the appellant for negligence arising out of an accident between a motor taxi driven by the appellant and a motor taxi driven by the second respondent. It was argued on appeal that the second respondent was guilty of contributory negligence.

Held: on the facts the second respondent had not in his own interest taken reasonable care of himself and had contributed by this want of care to his own injury; in the circumstances the fault should be apportioned as to one fourth to the second respondent and three fourths to the appellant.

FEDERAL COURT.

Yap Tyou Min for the appellant/1st defendant.

M.P.D. Nair for the respondents/plaintiffs.

Cur. Adv. Vult.

The judgment of the court was delivered by —

Tan Ah Tah F.J.: In this case the first plaintiff was at all material times the owner of taxi No. SH 2598 which was driven by the second plaintiff along Changi Road near the 12½ milestone towards the city at about 1.30 p.m. on 12th April, 1965 when it came into collision with taxi No. SH 4551 which was driven by the first defendant and was travelling in the opposite direction towards Changi Point.

By their statement of claim the plaintiffs alleged that the second defendant was at all material times the owner of taxi No. SH 4551. The plaintiffs therefore claimed damages against both the defendants. The learned trial judge awarded the second plaintiff the sum of $1,200 as general damages and the sum of $1,298 as special damages against the first defendant. He also gave judgment in the agreed sum of $4,165 in favour of the first plaintiff against the first defendant. The claim by the first plaintiff against the second defendant was dismissed with costs as no evidence had been given to show that the second defendant was the owner of taxi No. SH 4551 or that the first defendant was his servant or agent. The first defendant has now brought this appeal against the judgment of the learned trial judge.

The second plaintiff's version of the accident was as follows. As he was driving along Changi Road, the first defendant's taxi, which was travelling in the opposite direction, overtook a moving bus and in doing so went over the broken white line in the centre of the road into his path and collided with his taxi. He first saw the on-coming taxi when it was about 30 feet away. He was then driving along the middle of his side of the road at a speed of about 30 miles per hour. He applied his brakes violently and swerved to the left but was unable to avoid the collision.

The first defendant gave the following version of the accident. As he was driving his taxi along Changi Road to Changi Point he saw the second plaintiff's taxi approaching him when it was 200 yards away. There was a car 100 yards ahead of him which passed the second plaintiff's taxi when it was 100 yards away from him. The second plaintiff's taxi, which was being driven unsteadily, came on to the first defendant's side of the road. The first defendant applied his brakes but the second